

IN THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI

E. L. GARNER,

COMPLAINANT

VS.

NO. 80-9-695

DEL-CON, INC., LEE GARNER,
PANOLA COUNTY BANK, JAMES MCCLURE, JR.,
SOUTHERN CULVERT & SUPPLY COMPANY, INC.,
MRS. W. C. GADD, d/b/a OLIVE BRANCH
READY-MIX AND ALL PERSONS HAVING OR
CLAIMING ANY LEGAL OR EQUITABLE INTEREST
IN THE LAND DESCRIBED HEREIN,

I-510

DEFENDANTS

DECREE CONFIRMING AND QUIETING TITLE TO LAND, ETC.

This cause came on this day to be heard on the Complainant's filed, sworn Amended Bill To Confirm And Quiet Title To Land, Etc., upon personal service of process upon Del-Con, Inc., a Mississippi corporation, by service of process upon its registered agent for process, Lee Garner, upon personal service of process upon Lee Garner, individually, upon the filed acknowledged Waiver and Joinder of Panola County Bank and James McClure, Jr., Trustee, upon service of process upon Southern Culvert and Supply Company, Inc., a Mississippi corporation, by service of process on the Honorable Edwin Lloyd Pittman, Secretary of State of the State of Mississippi, pursuant to Section 79-3-25 of the Mississippi Code of 1972, Annotated, and upon service of process on Robert F. Burcham, Jr., a non-resident of the State of Mississippi, by newspaper publication in the manner and for the time required by law, and by summons duly published to all persons having or claiming any legal or equitable interest in the land described herein, and upon oral and documentary evidence and the Court having heard and considered all of the same together with the argument of counsel and being now fully advised in the premises, the Court does find and adjudicate as follows, to-wit:

That Southern Culvert & Supply Company, Inc., is a Mississippi Corporation duly chartered and existing pursuant to the laws of the State of Mississippi, that said corporation has been suspended from carrying on its business in the State of Mississippi by the Office of the Secretary of State of the State of Mississippi, and the State Tax Commission of the State of

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Mississippi; that prior to its suspension, said corporation maintained its registered office in the City of Corinth, Alcorn County, Mississippi, and at said time maintained as its Registered Agent at said office one Robert F. Burcham, Jr. That the said Robert F. Burcham, Jr., is now a non-resident of the State of Mississippi and that his Post Office Address is Box 282, Adamsville, Tennessee, 38310, but that his street address is unknown to the Complainant after having made diligent inquiry to ascertain the same; that said corporation no longer maintains a registered office in the State of Mississippi, and maintains no Registered Agent in the State of Mississippi and has failed to appoint or maintain a Registered Agent within the State, and that its Registered Agent cannot with reasonable diligence be found at the registered office within the State of Mississippi; that the Secretary of State of the State of Mississippi is said corporation's agent upon whom any process, notice, or demand may be served pursuant to Section 79-3-25 of the Mississippi Code of 1972, Annotated; that pursuant to said Section, said corporation has been duly served with a summons issued in this cause by service upon the Honorable Edwin Lloyd Pittman, Secretary of State of the State of Mississippi and which summons was served upon said Secretary of State more than thirty (30) days preceding this date. That Robert F. Burcham, Jr., is a nonresident of the State of Mississippi and that its post office address is Post Office Box 282, Adamsville, Tennessee, 38310, but that his street address is unknown to the Complainant after having made diligent inquiry to ascertain the same; that Robert F. Burcham, Jr., asserts a claim against the property described herein as the result of alleged work and/or material furnished and installed on said land and that said interest or claim is denied by the Complainant and that Robert F. Burcham, Jr., is a necessary party defendant to said cause of action and has been duly served with process by publication in the DeSoto County Tribune, a newspaper having a general circulation in DeSoto County, Mississippi, and which publication meets all requirements of law; that Mrs. W. C. Gadd, d/b/a Olive Branch Ready-Mix, is an adult resident citizen of DeSoto County, Mississippi, and that at the time of the filing of the original bill, she was a necessary party to said cause of action but now has been dismissed herefrom as hereinafter provided; that all persons having or claiming any legal or equitable interest in the lands described below, said persons and their places of residence and street addresses being unknown to the Complainant after diligent search and inquiry to ascertain the same have been made party defendants

in this cause of action and have been duly summoned by newspaper publication appearing in the DeSoto County Tribune, a newspaper having a general circulation in DeSoto County, Mississippi, in the manner prescribed by law. That all defendants are properly before the court and the court has jurisdiction over all parties and the subject matter of said cause of action *and that no answers have been filed in this cause.*

That the Complainant, E. L. Garner, is the owner of the fee simple title to and is in possession of certain real property lying and being situated in DeSoto County, Mississippi, and described as follows, to wit:

A tract of land located in the Southwest Quarter of Section 11, Township 2 South, Range 6 West, DeSoto County, Mississippi, and more particularly described as:

Beginning at the intersection of the North-South center line of said section and the South right of way line of Mississippi Highway 78 Bypass; which point is 314.65 feet North of the Northeast corner of the Southeast one quarter of the Northwest one quarter; run thence South 57 degrees 29 minutes 50 seconds East along said right of way a distance of 310.75 feet to a point; run thence South 61 degrees 28 minutes 30 seconds East along said right of way a distance of 900.35 feet to a point; run thence South 59 degrees 53 minutes East along said right of way a distance of 337.89 feet to a point; run thence South 30 degrees 07 minutes West a distance of 272.16 feet to a point; run thence South 59 degrees 53 minutes East a distance of 130 feet to a point; run thence South a distance of 571.47 feet to a point; run thence North 89 degrees 38 minutes West a distance of 1352.56 feet to the point of beginning of the herein described tract; run thence South 86 degrees 08 minutes West a distance of 685.2 feet to a point; run thence North 89 degrees 53 minutes West a distance of 306.96 feet to a point; run thence North 80 degrees 24 minutes West a distance of 312.71 feet to a point, being a fence corner; run thence South 0 degrees 49 minutes West along a fence a distance of 1345.27 feet to a point; run thence South 89 degrees 53 minutes East along a fence a distance of 1324.53 feet to a point; run thence North 0 degrees 19 minutes East a distance of 1334.0 feet to the point of beginning of the herein described tract.

That title to the heretofore described real property passed out of the sovereign more than 75 years prior to the filing of this bill and that the Complainant deraigns his title to the property for the past sixty years prior to the filing of this bill as follows:

- (a) (Patent) The United States of America, Grantor, to Tun-nu-cha, Grantee, dated October 6, 1840, recorded in Deed Book 24, Page 63.
- (b) A. D. Waldrop and wife, Susie Waldrop, Grantor, to Moses Moore, Grantee, by Warranty Deed dated December 4, 1907, recorded in Deed Book 14, Page 471.
- (c) J. F. Conger, Commissioner, Grantor, to A. M. Watkins, Grantee, by Commissioner's Deed dated May 19, 1941, recorded in Deed Book 28, Page 293.
- (d) A. M. Watkins and wife, Chellie S. Watkins, Grantors, to Del-Con, Inc., by Warranty Deed dated February 20, 1973, recorded in Deed Book 102, Page 328.

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(e) Del-Con, Inc., Grantor, to E. L. Garner, Grantee, by Warranty Deed dated August 16, 1973, recorded in Deed Book 106, Page 556.

(f) Del-Con, Inc., to E. L. Garner, by Quitclaim Deed dated March 8, 1976, recorded in Deed Book 123, Page 357.

That the aforesaid deeds are of record in the Office of the Chancery Clerk of DeSoto County, Mississippi.

That on the 16th day of August, 1973, Del-Con, Inc., by Warranty Deed conveyed the above described property to E. L. Garner by instrument of record in Deed Book 106, Page 556 in the Office of the Chancery Clerk. That the said E. L. Garner went into possession of said property on the 16th day of August, 1973, and that there are no parties or persons claiming adversely against the title of the said E. L. Garner, nor adversely in possession of said property. That on or about March 8, 1976, it was determined that the description in the Warranty Deed previously conveying said property to E. L. Garner by Del-Con, Inc., (Deed Book 106, Page 556), was incorrect and that a typographical error had been made in said description and which error cast a doubt or cloud upon the title to said property. That upon learning of said error in the aforesaid Warranty Deed, Del-Con, Inc., reconveyed said property to the Complainant in order to correct said description, said conveyance being by Quitclaim Deed recorded in Deed Book 123, Page 357 in the Office of the Chancery Clerk of DeSoto County, Mississippi and which corrected description is fully set forth hereinabove.

That on the 8th day of March, 1976, Del-Con, Inc., the Grantor in the aforesaid Quitclaim Deed, (Deed Book 123, Page 357), had been suspended by the Secretary of State of the State of Mississippi pursuant to state law and which suspension took effect on September 16, 1974, and that said corporation had been suspended by the State Tax Commission pursuant to state law on the 3rd day of April, 1975. That the suspension by the Secretary of State's Office of the State of Mississippi was pursuant to Section 79-3-189 of the Mississippi Code of 1972, Annotated, for its failure to file an Annual Report, and that said corporation was suspended by the State Tax Commission of the State of Mississippi pursuant to Section 27-13-27 of the Mississippi Code of 1972, Annotated, for its failure to pay Corporate Franchise Taxes due the State Tax Commission of the State of Mississippi. That said corporation has not been reinstated by the State Tax Commission of the State of Mississippi nor by the Secretary of State of the State of Mississippi, and said corporation remains suspended at this time. Accordingly, on the 8th day of March, 1976,

when the said corporation attempted to reconvey said property, in order to properly describe the same to the Complainant by the aforesaid deed of record in Deed Book 123, Page 357, said corporation had no power, right, or authority to or perform any act within the State of Mississippi by virtue of said suspension. That as a result of said suspension, and said corporation's inability to perform and exercise any power previously granted to it, the aforesaid Quitclaim Deed failed to convey said property, correctly described, to the Complainant as anticipated thereby. That accordingly there is cast a cloud upon the Complainant's title to said property as a result of the aforesaid suspension, and that said cloud should be removed.

That Lee Garner was and is the sole stockholder of Del-Con, Inc., and he was the said sole stockholder at the time of the corporation's original conveyance to E. L. Garner by deed of record in Deed Book 106, Page 556, and by the subsequent deed by said corporation to E. L. Garner by deed of record in Deed Book 123, Page 357. That as the sole stockholder of said corporation, said Lee Garner was a necessary party to this cause of action and has been properly summoned before this court as heretofore recited.

That on the 16th day of August, 1973, the Complainant executed a Deed of Trust which secured his indebtedness to the Panola County Bank, Sardis, Mississippi, and wherein James McClure, Jr., was the Trustee of said instrument. That said Deed of Trust conveyed, or attempted to convey, to James McClure, Jr., Trustee, for the benefit of Panola County Bank, the aforesaid property described herein but that said description as contained in said deed of trust was incorrect. That accordingly, said Deed of Trust was recorded in Deed of Trust Book 164, Page 288, in the Office of the Chancery Clerk of DeSoto County, Mississippi. That thereafter on the 21st day of November, 1974, the Complainant conveyed, or attempted to convey, by Deed of Trust to Panola County Bank, Sardis, Mississippi, and James McClure, Jr., Trustee, the aforescribed real property and that an error again appeared in said description; that it was the Complainant's intention to convey in trust the aforesaid property described aforesaid. That said Deed of Trust was duly recorded in Deed of Trust Book 181, Page 469, in the Office of the Chancery Clerk of DeSoto County, Mississippi. That thereafter, on or about the 8th day of March, 1976, it was determined, as stated aforesaid, that the description contained in the aforesaid Deeds of Trust, (Deed of Trust Book 164, Page 288 and Deed of Trust Book 181, Page 469) previously referred to in this paragraph incorrectly described the property purported to be

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conveyed by said Deeds of Trust and that the descriptions contained in the aforesaid Deeds of Trust incorrectly described said property, the description being taken from the Complainant's original Warranty Deed from Del-Con, Inc., as recorded in Deed Book 106, Page 556. That upon determining that said property was incorrectly described in said Deeds of Trust, E. L. Garner reconveyed said property to James McClure, Jr., Trustee, by Deed of Trust dated March 22, 1976, and duly recorded in Real Estate Deed of Trust Book 197, Page 521, in the Office of the Chancery Clerk of DeSoto County, Mississippi. That accordingly the said Panola County Bank and James McClure, Jr., are both necessary parties to this cause of action, said parties having an interest in the property described herein and both parties being before the court upon their filed, signed, acknowledged Waiver and Joinder.

That on or about the 21st day of December, 1973, Southern Culver & Supply Co., Inc., caused a notice of construction lien to be filed within the construction lien records of DeSoto County, Mississippi, and which notice was duly recorded in Construction Lien Book 1, Page 317, in the Office of the Chancery Clerk of DeSoto County, Mississippi. That the description contained in said notice included therein the Complainant's property and being the property described herein. That the said Southern Culvert & Supply Co., Inc., failed to enforce said lien by commencing suit in the Circuit Court of DeSoto County, Mississippi, within twelve months next after the time when the money due and claimed by Southern Culvert & Supply Co., Inc., became due and payable as required by Section 85-7-141 of the Mississippi Code of 1972, Annotated, and that said company is now barred by said statute from enforcing their claim and/or lien against said property and that said notice should be expunged from the aforesaid lien records. That the services rendered by the said Southern Culvert & Supply Co., Inc., were rendered to Del-Con, Inc., for construction of a sub division known as Chateau Ridge Subdivision, and which is composed of approximately 90 acres, situated north of and adjacent to the property described herein and that said company had no enforceable lien as to the property described herein and which property is owned by the Complainant and as stated aforesaid said lien should be expunged from the records of liens maintained in the Office of the Chancery Clerk of DeSoto County, Mississippi. That said notice casts a cloud upon the title to said property and accordingly should be removed by the court.

That on or about the 22nd day of February, 1974, W. C. Gadd, doing business as Olive Branch Ready-Mix, caused a Notice of Construction Lien to be

filed within the Construction Lien Records of DeSoto County, Mississippi, and which notice was duly recorded in Construction Lien Book 1, Page 341, in the Office of the Chancery Clerk of DeSoto County, Mississippi. That the description contained in said notice included the Complainant's property and being the property described herein and that the said W. C. Gadd, d/b/a Olive Branch Ready-Mix, failed to enforce said lien by commencing suit in the Circuit Court of DeSoto County, Mississippi, in twelve months next after the time when the money due and claimed by W. C. Gadd, d/b/a Olive Branch Ready-Mix, became due and payable as required by Section 85-7-141 of the Mississippi Code of 1972, Annotated, and that said W. C. Gadd is now barred by said statute from enforcing his claim and/or lien against said property and that said notice should be expunged from the aforesaid lien records. That the services rendered by the said W. C. Gadd, d/b/a Olive Branch Ready-Mix, were rendered to Del-Con, Inc., for construction of the subdivision known as Chateau Ridge Subdivision, and which is composed of approximately 90 acres, situated north of and adjacent to the property described herein and that said company had no enforceable lien as to the property described herein, and which property is owned by the Complainant, and accordingly, that said lien shall be expunged from the records of liens maintained in the Office of the Chancery Clerk of DeSoto County, Mississippi. That said notice cast a cloud upon the title to said property. That W. C. Gadd is now deceased and his Last Will and Testament has been duly admitted to probate in the Chancery Court of DeSoto County, Mississippi, in cause number 80-7-499. That pursuant to the decedent's will, said business, Olive Branch Ready-Mix was devised and bequeathed to the decedent's widow, Mrs. W. C. Gadd. That the said Mrs. W. C. Gadd, since the filing of this cause of action, has caused a written cancellation to be filed in the aforesaid lien records canceling the aforesaid lien notice. That accordingly the said Mrs. W. C. Gadd is no longer a necessary party herein and she is hereby on motion of the Complainant dismissed herefrom.

That the Complainant is in possession of the land described aforesaid as the owner thereof, and he, together with his predecessors in title, have been in actual, open, notorious, exclusive, and continuous possession of the entire tract under color of title, and no adverse claim of any nature has ever been asserted against the title or possession of the present owner, or against his predecessors in title. That the Complainant has used said property for various purposes, has paid the taxes on it, has occupied it, and has done so to the exclusion of all of other persons.

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That there is a cloud on the title to the land because of the uncertainty in the description contained in the Warranty Deed conveying said property to him from Del-Con, Inc., be deed in Deed Book 106, Page 556, and by virtue of the purported Construction Lien of Southern Culvert & Supply Co., Inc. That the Complainant has made a diligent search and inquiry to determine the names of all parties in interest and he believes that all parties are named herein, but in order to cancel and remove all clouds on the title, to said lands has made all other unknown parties having or claiming any legal or equitable interest in the land described aforesaid defendants to this suit, and that said persons and their places of residence and street addresses are unknown to the Complainant after diligent search and inquiry to ascertain the same and that he has caused a summons by publication to be issued to them by publication in the DeSoto County Tribune, a newspaper having a general circulation in DeSoto County, Mississippi, in the manner and for the time required by law.

That the Complainant is entitled to the relief as prayed for in said petition and hereinafter granted, PREMISES CONSIDERED:

It Is Hereby Ordered, Adjudged and Decreed by the Court as follows:

(1) That the Complainant, E. L. Garner, is the real owner and fee simple of the lands located in DeSoto County, Mississippi, and described as follows, to-wit:

A tract of land located in the Southwest Quarter of Section 11, Township 2 South, Range 6 West, DeSoto County, Mississippi, and more particularly described as:

Beginning at the intersection of the North-South center line of said section and the South right of way line of Mississippi Highway 78 Bypass; which point is 314.65 feet North of the Northeast corner of the Southeast one quarter of the Northwest one quarter; run thence South 57 degrees 29 minutes 50 seconds East along said right of way a distance of 310.75 feet to a point; run thence South 61 degrees 28 minutes 30 seconds East along said right of way a distance of 900.35 feet to a point; run thence South 59 degrees 53 minutes East along said right of way a distance of 337.89 feet to a point; run thence South 30 degrees 07 minutes West a distance of 272.16 feet to a point; run thence South 59 degrees 53 minutes East a distance of 130 feet to a point; run thence South a distance of 571.47 feet to a point; run thence North 89 degrees 38 minutes West a distance of 1352.56 feet to the point of beginning of the herein described tract; run thence South 86 degrees 08 minutes West a distance of 685.2 feet to a point; run thence North 89 degrees 53 minutes West a distance of 306.96 feet to a point; run thence North 80 degrees 24 minutes West a distance of 312.71 feet to a point, being a fence corner; run thence South 0 degrees 49 minutes West along a fence a distance of 1345.27 feet to a point; run thence South 89 degrees 53 minutes East along a fence a distance of 1324.53 feet to a point; run thence North 0 degrees 19 minutes East a distance of 1334.0 feet to the point of beginning of the herein described tract.

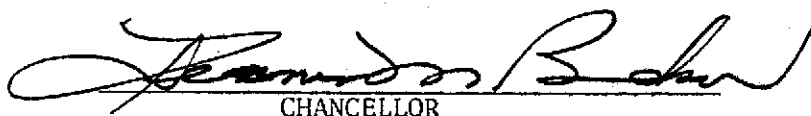
(2) That the fee simple title of E. L. Garner in the aforescribed land is hereby confirmed in him as against all defendants named herein subject however to the aforesaid deeds of trust in favor of Panola County Bank and of record in Deed of Trust Books 164, Page 288; 181, Page 469 and 197, Page 521, and the Chancery Clerk of DeSoto County, Mississippi, is hereby directed to make a final record of this Decree and is directed to make a notation on the land deed records of DeSoto County, Mississippi, of said decree by recording the same within the land records of said county.

(3) That Mrs. W. C. Gadd is hereby nonsuited and dismissed from this cause of action.

(4) That the Clerk of the Chancery Court of DeSoto County, Mississippi, shall note on the Notice of Construction Lien filed by Southern Culvert & Supply Company, Inc., in Lien Book 1, Page 317, in the Office of the Chancery Clerk of DeSoto County, Mississippi, that said notice is hereby canceled by virtue of this decree and proper notation shall be made upon the face of said Notice by reference to this Decree as authority for said cancellation.

(5) That all costs of this proceeding are hereby assessed to the Complainant.

SO ORDERED, ADJUDGED AND DECREED on this the ^{10th} ~~2nd~~ day of December, 1980.


CHANCELLOR

STATE OF MISSISSIPPI, DESOTO COUNTY

I certify that the within instrument was filed for record at 10 o'clock — minutes A M. 11 day of Dec. 1980, and that the same has been recorded in Book 151 Page 541 records of WARRANTY DEEDS of said County.

Witness my hand and seal this the 11 day of December 1980.
Fee \$ 11.00 Pd.

SEAL H. H. Ferguson CLERK